

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CRAIG MOSS,	:	
Petitioner	:	
	:	No. 1:18-cv-00078
v.	:	
	:	(Judge Rambo)
DISTRICT ATTORNEY OF	:	
YORK COUNTY, <u>et al.</u>,	:	
Respondents	:	

MEMORANDUM

Presently before the Court is Petitioner Craig Moss’ petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241. (Doc. No. 1.) Petitioner has also filed a motion for leave to proceed in forma pauperis. (Doc. No. 2.) For the reasons that follow, Petitioner’s motion for leave to proceed in forma pauperis will be granted and upon preliminary consideration of the petition pursuant to Rule 4 of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254, as made applicable to § 2241 cases by Rule 1 thereof,¹ the Court will dismiss the petition without prejudice.

Petitioner is presently confined at York County Prison. (Doc. No. 1.) He provides that on January 15, 2017, he was charged with, inter alia, terroristic threats with intent to terrorize another, possessing instrument of crime with intent,

¹ Rule 4 states in pertinent part that: “The clerk must promptly forward the petition to a judge . . . and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition” Rule 4 of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

and simple assault. (Id. at 2; Ex. A, Commonwealth v. Moss, CP-67-CR-1471-2017 (C.C.P. York Cnty., 2017)). Petitioner was arraigned on April 7, 2017. Commonwealth v. Moss, CP-67-CR-1471-2017. Petitioner claims that his right to a speedy trial has been violated and that Respondents refuse to release him on bail. (Doc. No. 1 at 2, 3.)

“For state prisoners, federal habeas corpus is substantially a post-conviction remedy.” Moore v. DeYoung, 515 F.2d 437, 441 (3d Cir. 19075). Nevertheless, federal courts have jurisdiction pursuant to 28 U.S.C. § 2241 to issue the writ before a judgment is rendered in a state criminal proceeding.² Id. at 441-42. Moreover, while exhaustion of state remedies is statutorily mandated only in post-trial situations, see 28 U.S.C. § 2254(b), an exhaustion requirement in the 28 U.S.C. § 2241 pre-trial context has developed through decisional law. Moore, 515 F.2d at 442. “[A]lthough there is a distinction in the statutory language of §§ 2254 and 2241, there is no distinction insofar as the exhaustion requirement is concerned.” Id.

Exhaustion serves the interests of federalism and comity between the federal and state systems by allowing the state an initial opportunity to determine and correct any violations of a prisoner’s federal rights. O’Sullivan v. Boerckel, 526

² It is apparent from the instant petition and the Petitioner’s state court docket that he is a pretrial detainee and is therefore not in custody pursuant to a state court judgment. As such, the petitioner cannot proceed pursuant to § 2254, but rather, may proceed via § 2241 before a judgment is entered in a state criminal proceeding. See Smith v. Pa. State Atty. Gen., Civ. No. 11-1813, 2011 WL 6012976, at *1 (M.D. Pa. Nov. 3, 2011).

U.S. 838, 844 (1999). The petitioner bears the burden of demonstrating that he has exhausted his state remedies, which requires the petitioner to show that he has fairly presented his claim to the state courts. O'Halloran v. Ryan, 835 F.2d 506, 508 (3d Cir. 1987); Picard v. Connor, 404 U.S. 270, 278 (1971). To be fairly presented to the state courts, both the legal theory and the facts supporting the claim must have been presented. O'Halloran, 835 F.2d at 508. Additionally, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan, 526 U.S. at 845. A district court should not issue a writ of habeas corpus without exhaustion at the pre-trial stage unless extraordinary circumstances are present. Moore, 515 F.2d at 443. "In no area of the law is the need for a federal court to stay its hand pending completion of state proceedings more evident than in the case of pending criminal proceedings." Evans v. Court of Common Pleas, 959 F.2d 1227, 1234 (3d Cir. 1992).

It is apparent that Petitioner has not exhausted his state judicial remedies. Moreover, absent extraordinary circumstances, Younger³ abstention will apply when: "(1) there are ongoing state proceedings that are judicial in nature; (2) the

³ Younger v. Harris, 401 U.S. 37 (1981). The Younger abstention is not appropriate when "(1) the state proceedings are being undertaken in bad faith or for purposes of harassment or (2) some other extraordinary circumstances exist, such as proceedings pursuant to a flagrantly unconstitutional statute" Schall v. Joyce, 885 F.2d 101, 106 (3d Cir. 1989). These exceptions are to be narrowly construed. Loftus v. Twp. Of Lawrence Park, 764 F. Supp. 354, 357 (W.D. Pa. 1991).

state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise the federal claims.” Lazaridis v. Wehmer, 591 F.3d 666 (3d Cir. 2010) (quoting Addiction Specialists, Inc. v. Twp. Of Hampton, 411 F.3d 399, 408 (3d Cir. 2005)).

Here, the Court finds that there is an ongoing state judicial proceeding wherein the Petitioner is a defendant in a state criminal prosecution and it is clear that granting his request for relief would interfere with those proceedings. Additionally, the state’s criminal case against Petitioner undoubtedly implicates important state interests of the state’s enforcement of its criminal laws. Finally, Petitioner does have the opportunity to raise any constitutional claims in the context of his state criminal proceedings.

Consequently, because Petitioner has failed to exhaust his state court remedies, his claims concerning his ongoing criminal proceedings satisfy the requirements of abstention, and the instant habeas action does not raise the type of extraordinary circumstance contemplated under Younger, the habeas petition will be dismissed without prejudice.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: January 25, 2018